

REMARKS

In light of the above amendments and remarks to follow, reconsideration and allowance of this application are respectfully requested.

The Examiner is thanked for the courtesies extended during the telephonic interview conducted on July 22, 2010.

Claim 1 has been amended to include limitations corresponding to the limitations of independent claim 21 discussed during the Examiner interview. The amendments to claim 1 are not meant to change the intended scope of the pending claims. In addition, as discussed herein, the amendments to claim 1 place rejected claims 1-4, 7, 9-10 and 12-20 in condition for allowance, and should be entered in due course. Moreover, the amendments are manifest, requiring only a cursory review by the Examiner, thereby providing additional ground for their entry.

Claims 1-4, 7, 9-10 and 12-21 are pending in this application.

Claims 1-2, 7, 9-10, 12-14 and 18-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pubn. 2003/01792930 ("Kullik"). In addition, claims 3-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kullik in view of U.S. Patent Pubn. No. 2003/0066527 ("Chen"); claims 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kullik in view of U.S. Patent No. 6,050,262 ("Jay"); and claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kullik in view of U.S. Patent No. 6,467,477 ("Frank").

As discussed during the Examiner interview, independent claim 21 is directed to a breathing assistance device including, in relevant part, a ventilator having an inlet rotor and a motor, where the ventilator is integrated into a removable module

removably connectable to a breathing connection. In addition, claim 21 recites that at least one sensor is located in the removable module "at a position downstream of the inlet rotor of the ventilator and in the vicinity of the motor in order to substantially prevent condensation of gas nearby said at least one sensor." (Emphasis added). The positioning of the sensor in the vicinity of the motor and downstream of the inlet rotor of the ventilator, as required by claim 21, is critical to provide that, advantageously, "condensation of gas near" the sensor is substantially prevented, by the "heat released by [the] motor[, which] in effect reheats the respiratory gas passing into the" sensor. (See specification, for example, at pg. 14, ln. 12-16).

As also discussed during the interview, the applied portions of Kullik do not appear to disclose the positioning of the sensor downstream of the inlet rotor and in the vicinity of the motor as required by claim 21, which positioning is critical to operation of the claimed breathing device to substantially prevent condensation of gas nearby the sensor. (See MPEP § 2144.04.) Without the benefit of applicant's specification, one skilled in the art would not have a reason or motivation to rearrange the parts of Kullik to obtain the claimed breathing assistance device which may substantially prevent condensation of gas nearby the sensor. (See MPEP § 2144.04(VI.) (C.))

Accordingly, independent claim 21 is patentable over Kullik for at least the above reasons.

In addition, independent claim 1 has been amended to include limitations corresponding to those of claim 21 discussed above, and now recites, in relevant part, that the ventilator "having an inlet rotor and motor" is integrated into a first part of a removable module, and the at least one sensor is contained in a second part of the removable module at a position downstream of the first part of the module (which contains the inlet rotor) and "in the vicinity of the motor of the ventilator in order to substantially prevent condensation of gas nearby said at least one

sensor." Consequently, it is respectfully submitted that amended independent claim 1 is distinguishable from Kullik as applied by the Examiner for at least the same reasons as discussed above for claim 21.

Claims 2, 7, 9-10, 12-14 and 18-19 depend from claim 1. Accordingly, it is also respectfully submitted that dependent claims 2, 7, 9-10, 12-14 and 18-19 are distinguishable from Kullik as applied by the Examiner for at least the reasons previously described, and also because of the additional restrictions they require.

Claims 3-4, 15-17 and 20 depend from claim 1. Accordingly, it is also respectfully submitted that dependent claims 3-4, 15-17 and 20 are distinguishable from Kullik as applied by the Examiner for at least the reasons previously described. In addition, the Examiner does not appear to rely on Chen, Jay or Frank to overcome the above-described deficiencies of Kullik. Accordingly, it is also respectfully submitted that dependent claims 3-4, 15-17 and 20 are distinguishable from the combination of Kullik with Chen, Jay or Frank as applied by the Examiner, for at least the reasons previously described.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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